

REMARKS

Claims 2 to 7, 9 to 11, 18, 23 to 31, 33 to 35, 37, 38, 40, and 41 remain pending. Claims 1, 8, 12 to 17, 19 to 22, 32, 36, and 39 have been cancelled.

Claims 1 to 37 and 39 have been rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,224,851 B1 to Bara et al. (hereinafter referred to as "Bara") in view of OSHA Data (Chemical Sampling Information: Ethyl Perflurobutyl Ether) (hereinafter referred to as "OSHA"), JP 356079613A to Tsutsumi et al. (translation) (hereinafter referred to as Tsutsumi), and U.S. Patent No. 6,528,070 B1 to Bratescu (hereinafter referred to as Bratescu).

The rejection of claims 1 to 37 and 39 under 35 U.S.C. 103(a) as being unpatentable over Bara in view of OSHA, Tsutsumi, and Bratescu is moot since independent claims 1 and 39 and dependent claims 8, 12 to 17, 19 to 21, 32, 36, and 39 have been cancelled. Dependent claims 2 to 7, 9 to 11, 18, 22 to 31, 33 to 35, and 37 remain but have been amended to depend on independent claims other than claims 1 and 39 (now cancelled).

Claims 38, 40, and 41 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Bara in view of OSHA, Tsutsumi, Bratescu, and U.S. Patent No. 2,859,085 to Morrison (Morrison).

Bara discloses transfer-resistant makeup and sunscreen compositions. Bara discloses anhydrous compositions (col. 5, lines 53 to 59 and col. 6, lines 18 to 20) and emulsion compositions (col. 6, lines 11 to 25). Anhydrous compositions can take the form of an oily gel; a compacted or cast powder; a cream; a stick, such as a lipstick; foundation; mascaras;

eyeliners; eyeshadows; or blushes. Example 1 is an anhydrous lipstick. Emulsion compositions can be oil-in-water or water-in-oil. Example 2 is a water-in-oil emulsion taking the form of a foundation.

Claims 38, 40, and 41 are not obvious in view of the prior art because the combination of cited references does not yield the claimed invention. Independent claims 38, 40, and 41 as amended now require the composition to be an oil-in-water emulsion, to have an emulsifier, and be a cream. Bara does not specifically disclose a composition that is both an oil-in-water emulsion and a cream. The cream form is described as preferred (col. 7, lines 7 and 8) but is not specifically associated with an oil-in-water emulsion form. Further, neither example in Bara discloses such a composition. Still further, the claimed invention requires that the system have a non-aerosol container. Bara does not disclose a non-aerosol container. Thus, obtaining an oil-in-water emulsion in cream form requires picking and choosing and/or hindsight reconstruction in view of unspecified, hypothetical embodiments of the composition of Bara. It is even more unlikely when the disclosure of Bara is to be combined with three other references in hopes of yielding the claimed invention.

Claims 38, 40, and 41 are further not obvious in view of the prior art because the Tsutsumi reference has not been properly characterized in the Action and does not properly relate to or shed light on the composition of Bara. The Action stated that Tsutsumi teaches that a whipped stable cosmetic that is "without oil off and shape collapse." The Action also stated that "without shape collapse" property of Tsutsumi was equivalent to the "claimed textured surface-renewing property." This assertion is not well taken. The two properties are different on their

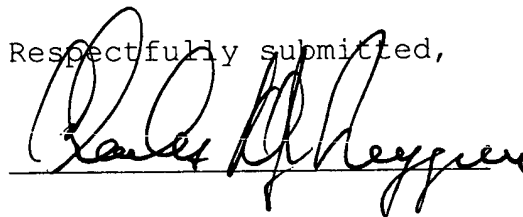
face. Using ordinary meanings for words, "without shape collapse" requires that shape be maintained in all circumstances, i.e., whether or not the cosmetic composition has been disturbed or whether or not it is present in a sealed container. In contrast, the composition in the claimed system or method must exhibit renewing of textured surface appearance after disturbance upon sealing of the container. Thus, the property "without shape collapse" is never inclusive of renewal of textured surface appearance. Therefore, the property of "without shape collapse" cannot be considered equivalent to the property of "claimed textured surface-renewing property" as erroneously asserted in the Action. Since there is no equivalence of properties, the disclosure of Tsutsumi does not relate to or shed light on the properties of the composition of Bara. Thus, there cannot be a suggestion to combine Bara and Tsutsumi references.

Claims 38, 40, and 41 have been amended to require a composition viscosity range of 20,000 to about 1,500,000. The range reflects viscosities of cream compositions.

Reconsideration of claims 2 to 7, 9 to 11, 18, 23 to 31, 33 to 35, 37, 38, 40, and 41 is deemed warranted in view of the foregoing, and allowance of said claims is earnestly solicited.

Dated: January 5, 2007

Respectfully submitted,



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